

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WEST COAST DOOR, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-65

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from the issuance of a \$250 civil penalty for the alleged violation of Section 9.03(b) of Regulation I, came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and Gayle Rothrock, Member, convened at Lacey, Washington, on February 25, 1982. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by its President, William B. Swensen. Respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
5 certified copy of its Regulation I and amendments thereto, which are
6 officially noticed.

7 II

8 On April 2, 1981, at about 1:05 p.m., respondent's inspector
9 noticed a dark colored plume rising from appellant's hog fuel boiler
10 at 3102 Pine Street in Tacoma. After positioning himself, he observed
11 the plume and recorded opacities ranging from 30 percent to 100
12 percent for 6 and 3/4 minutes of 12 minutes observed. The inspector
13 issued Notice of Violation No. 17694 by mail on April 3, 1981.
14 Respondent later received a Notice and Order of Civil Penalty of \$250
15 for the alleged violation of Section 9.03(b) of respondent's
16 Regulation I. From this appellant appeals.

17 III

18 Section 9.03(b) of respondent's Regulation I makes it unlawful for
19 any person to cause or allow the emission of any air contaminant for a
20 period totaling more than 3 minutes in any one hour which is of an
21 opacity equal to or greater than 20 percent. Section 3.29 of
22 Regulation I provides for a civil penalty of up to \$250 per day for
23 each violation of Regulation I. The appellant has been cited on three
24 prior occasions for violation of the same regulation, Section 9.03,
25 from its boiler stack.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
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IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Appellant contends that the smoke emission in question was gray rather than black. The regulation in question, Section 9.03(b), does not turn on this distinction, however. An emission of greater than 20 percent opacity violates the rule notwithstanding its color or shade. Appellant violated Section 9.03(b) of Regulation I as alleged on April 2, 1981, by causing or allowing an air emission of smoke in excess of the limits established by the regulation.

II

In light of appellant's violation of the same regulation on three prior occasions, the amount of civil penalty assessed was reasonable.

III

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

1 From these Conclusions the Board enters the following

2 ORDER

3 The \$250 civil penalty is affirmed.

4 DATED this 30th day of June, 1982.

5 POLLUTION CONTROL HEARINGS BOARD

6
7 Nat W. Washington
8 NAT W. WASHINGTON, Chairman

9
10 Gayle Rothrock
11 GAYLE ROTHROCK, Vice Chairman